



Tennessee Secondary School Athletic Association

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January 12, 2012

Mr. Brad Gioia, Headmaster
Montgomery Bell Academy
4001 Harding Road
Nashville, TN 37205

Dear Mr. Gioia:

This letter is in regard to the recent investigation of possible violations of the TSSAA Bylaws at MBA.

In April 2011, MBA reported a possible violation of TSSAA Bylaws in connection with the delivery of a cashier's check for \$1,500 to a student-athlete, payable to the student's father. The check was delivered to the student-athlete by MBA's head football coach sometime in the fall of 2008, the student's first year at MBA, when the student was in the 9th grade. In early April 2011 the student's father reported the delivery of the check to school officials. The school disclosed it to TSSAA. At that time, the source of the cashier's check was not known, and TSSAA therefore could not determine whether delivery of the check constituted a violation of any TSSAA Bylaw. Because MBA took its own action to address what appeared to be an isolated occurrence with uncertain ramifications under the TSSAA Bylaws, TSSAA did not investigate the matter further at that time.¹

On May 23, 2011, the Executive Committee of the MBA Board of Trustees directed the formation of a "Review Committee" to review past financial aid policies and practices concerning student-athletes. The Review Committee interviewed a number of individuals and investigated matters that had been reported by the head football coach as well as other matters that came to the Committee's attention. In August 2011, MBA's attorneys contacted TSSAA's attorney to report on the results of the work of the MBA Review Committee. TSSAA then conducted its own investigation. MBA officials facilitated TSSAA's investigation where needed and cooperated fully with TSSAA's efforts to gather information.

¹ MBA relieved its head football coach of his coaching duties. TSSAA at the time referred to the strong action taken by MBA. TSSAA's reference was not intended as a commentary about the particulars of MBA's personnel decision but rather an acknowledgment that MBA had acted decisively.

A summary of the results of TSSAA's investigation is set out below, broken down into separate sections. The first two sections describe the general nature of the violations found. The third section discusses general concerns that resulted from TSSAA's investigation. The fourth section details MBA's response to its own investigation and to TSSAA's investigation. The fifth section outlines the disposition of the case.

(1) Recruiting Rule.

The TSSAA Recruiting Rule, in Article II, Section 17, of the TSSAA Bylaws, states in pertinent part:

Athletic recruiting is prohibited. Athletic recruiting is the use of influence on a student or the parents or guardians of a student by any person(s) directly or indirectly associated with the school, to secure or retain a student for athletic purposes.

The TSSAA investigation disclosed three violations of the Recruiting Rule. The first violation was the head football coach's 2008 delivery of the \$1,500 check, procured by a member of the MBA Board of Trustees, to a student-athlete for the benefit of the student-athlete's father.² The other two violations were payments in 2010-2011 of tuition for two seventh-grade student-athletes.

There was some dispute among witnesses about the origin of the funds for the tuition payments for the two seventh-grade student-athletes. TSSAA has not attempted to resolve that dispute. The head football coach delivered payments to the school's finance office and received receipts for them, and the payments followed pre-enrollment assurances the head coach had made to the families of the student-athletes that such assistance would be provided. These payments violated the TSSAA Recruiting Rule, regardless of the origin of the funds.

(2) Tuition and Financial Aid Rule.

The TSSAA Tuition and Financial Aid Rule, in Article II, Section 16, of the TSSAA Bylaws, states in pertinent part:

If tuition is charged, it must be paid by parent, bona fide guardian or other family member. If a parent, guardian or other family member secures a loan for payment of tuition, it must remain an obligation of the parents, guardian or other family member to repay the principle and interest in full with no exceptions. Financial aid will be allowed under the following conditions:

² Because the MBA Review Committee obtained and disclosed new information about the source of the \$1,500 cashier's check that had been reported in April 2011, the circumstances surrounding that check were included in the scope of TSSAA's investigation.

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2. *Financial aid may be awarded on the basis of need, but proof of such need must be filed in the TSSAA office on forms approved by the Executive Director.... A committee consisting of School Heads from Division II schools and one ex-officio, non-voting member from the Board of Control and Legislative Council will meet and make recommendations to the Board of Control on each student submitted. In addition, this committee will collect information from schools regarding financial aid statistics, grant procedures, and the overall financial aid program within the school. The Board of Control will then rule on all cases at the August meeting....*

3. *Any loan program, grant program, educational foundation or similar program that is established and/or administered, in whole or in part, by a school or official of a school is considered financial aid.*

Schools shall remove any student from athletic eligibility whose accounts with the school are 60 days overdue.

The TSSAA investigation disclosed eight instances, spanning a period of several years, in which student-athletes were allowed to participate in athletics at times when they were ineligible under the Tuition and Financial Aid Rule. In three instances, MBA collected none of the tuition balance, after financial aid, from student-athletes during their senior years.³ In the other instances third parties provided tuition assistance for student-athletes.⁴

(3) Concerns.

The TSSAA Bylaws generally serve three purposes. They help to keep athletic competition in its proper place as subordinate to the primary academic mission of secondary education; they help to prevent the exploitation of students for the sake of athletics; and they help to maintain fair competition among member schools.

³ These three student-athletes all received substantial amounts of need-based financial aid, and it was the balance after aid that was not collected. MBA's financial records showed that MBA failed in some other instances to collect tuition from some other students who did not participate in interscholastic athletics.

⁴ In one of these instances the tuition was paid as an employee benefit for the student-athlete's father. In the other instances decisions were made by individuals or groups to provide tuition assistance, beyond whatever need-based financial aid was awarded, to student-athletes whose families appeared to be in financial need or distress.

Many of those interviewed for TSSAA's investigation spoke of a culture at MBA of helping families in need. Good intentions do not excuse the institution's failure to understand and follow important TSSAA Bylaws that serve the purposes outlined above. Over a period of several years MBA did not see to it that key members of the school's administration understood the requirements of the TSSAA Bylaws, particularly the Tuition and Financial Aid Rule and the Recruiting Rule.

The billing and collection of tuition at MBA was the responsibility of the Director of Finance and his staff. The Controller, a member of the staff in the Finance office, was primarily responsible for billing and collecting receivables. MBA officials did not educate or inform the Director of Finance or the Controller about the requirements of the Tuition and Financial Aid Rule. In addition, members of the MBA "community" were not made aware of the requirements of the rule. Consequently, third parties paid all or part of the tuition of student-athletes, and the Finance office knowingly collected those tuition payments from third parties and in some cases billed third parties, without any question being raised about the athletic eligibility of the student-athletes whose tuition was paid by third parties.

These key members of the MBA administration in the Finance office also were not educated or informed about the requirements of the Recruiting Rule. Consequently, no question was raised when the head football coach delivered cash to the Finance office to be applied to the tuition of two seventh-grade student athletes.

The head football coach, after several years in the position, also expressed a lack of understanding about the Recruiting Rule, believing that seventh- and eighth-grade students were beyond the "jurisdiction" of the TSSAA Bylaws. The issue under the Recruiting Rule is not one of "jurisdiction" over a particular student-athlete. Offering and providing extra financial assistance to induce a seventh- or eighth-grade student-athlete to attend for athletic reasons violates the Recruiting Rule.

(4) MBA Response.

MBA conducted its own internal investigation and self-reported the various matters described above, and school officials cooperated fully with TSSAA's investigation.⁵ While the greatest number of issues and concerns revolved around the Tuition and Financial Aid Rule, the investigation disclosed nothing to suggest that MBA's actions grew out of any intent to circumvent that rule or unfairly gain a competitive advantage.

MBA has acknowledged that failure on the part of key school officials to know or understand what the Bylaws require does not excuse the school's failure to comply with

⁵ Some of the Tuition and Financial Aid Rule circumstances that TSSAA examined were not encompassed by the MBA Review Committee's work. However, there was no effort on the part of MBA to conceal those circumstances during TSSAA's investigation. All information requested by TSSAA in connection with those circumstances was freely disclosed.

those Bylaws. Before TSSAA concluded its investigation, MBA recognized its own administrative need to take action in order to insure future compliance with the TSSAA Bylaws. MBA proceeded on its own to implement various measures to do so. Those measures include:

- a. A requirement that all financial aid for any student must come through the financial aid office and be under the institutional control of the school.
- b. Appointment of a Compliance Officer, reporting directly to the Headmaster, who is responsible for insuring compliance with TSSAA Rules on financial aid and recruiting. The Compliance Officer is to develop and conduct formal training on TSSAA Rules to insure compliance among all coaches, staff, and administration.
- c. Communication by the Director of Admissions to the parents of students and prospective students regarding the TSSAA Rules relative to recruiting and financial aid.
- d. Insuring that the school has an appropriate software system to identify the source of tuition payments and the relationship of the payor to the student whose tuition is being paid.
- e. Moving the handling of tuition for summer school to the Finance Office.
- f. Equalizing pay for those working summer and holiday camps, with pay to go through and be approved by the Compliance Officer.
- g. Development of a Compliance Plan to educate the entire MBA community concerning TSSAA Rules, with the Plan to be consistently reviewed and improved, together with the development of procedures, practices, and communication lines between MBA's various departments when issues arise that may implicate TSSAA Rules.
- h. Implementation of a new billing process in which parents of student-athletes are notified on their past-due statements of the risk to athletic eligibility under the TSSAA Tuition and Financial Aid Rule if the bills are not paid.

After TSSAA concluded its investigation, MBA officials met with TSSAA to discuss the results. MBA did not dispute any of TSSAA's findings and conclusions resulting from that investigation. In addition to self-reporting and fully cooperating with TSSAA and developing its own plan of corrective action, MBA accepted the results of TSSAA's investigation, accepted the results prescribed in the TSSAA Bylaws for playing ineligible student-athletes, and proposed meaningful consequences for the violations and concerns discussed above.

(5) Disposition.

TSSAA's action in this instance is in large part because of the action MBA took on its own following its own internal investigation by its Review Committee, as well as MBA's full cooperation with the TSSAA investigation and voluntary acceptance of the consequences of its actions. The TSSAA hopes and expects that the corrective measures

MBA has taken will strengthen its overall athletic program and will assist and encourage other Division II schools in their compliance with the TSSAA Bylaws.⁶

As a result of the violations of the Recruiting Rule and the playing of ineligible student-athletes under the Tuition and Financial Aid Rule in football and basketball, MBA has agreed with TSSAA that the following disposition is appropriate, and the investigation therefore is concluded as follows:

1. As prescribed in the Bylaws for playing ineligible student-athletes, all regular-season wins in football for 2007-08, 2008-09, 2009-10, and 2010-11 are vacated.
2. As prescribed in the Bylaws for playing ineligible student-athletes, all regular season wins in boys basketball for 2007-08 and 2008-09, and wins in eight regular season contests in 2009-10, are vacated.
3. As prescribed in the Bylaws for playing ineligible student-athletes, MBA will pay TSSAA the \$250 maximum fine per sport per season for self-reported playing of ineligible players in football for four years and boys basketball for three years, for a total of \$1,750.00.
4. As prescribed in the Bylaws for playing ineligible student-athletes, MBA will return all football playoff expense allotments for those four years, which total \$46,952.33.
5. As prescribed in the Bylaws for playing ineligible student-athletes, MBA will vacate and return the Division II Football State Championship Award for 2007-08, the Division II Football State Runner-up Award for 2009-10, and the Division II Basketball State Championship Award for 2009-10.
6. As prescribed in the Bylaws for violations of the Recruiting Rule,⁷ the following student-athletes were or are ineligible at MBA for the school years shown:

⁶ TSSAA understands that there have been strong differences among various members of the MBA community about various aspects of this matter as they relate to particular individuals. However, TSSAA's focus is on the institution, i.e., the member school. The undisputed actions or inactions of particular individuals are noted herein only to provide context for TSSAA's findings regarding the institution. Determinations about individual responsibility or consequences are internal to MBA as an institution and are beyond the scope of TSSAA's role.

⁷ The Recruiting Rule authorizes the TSSAA to impose more than the minimum of one year of ineligibility as a result of Recruiting Rule violations. In this case the TSSAA has not done so.

- a. Aaron Simonis: 2008-09 (9th grade year)⁸
 - b. Will Eskew: 2012-13 (9th grade year)
 - c. Gabe Angel: 2012-13 (9th grade year)⁹
7. MBA's entire athletic program will be on probation for two years beginning February 1, 2012, and MBA will pay an additional fine of \$2,000 in accordance with Article V, Section 4(2), of the TSSAA Constitution. If any violation of a TSSAA eligibility rule occurs during those two years, (a) MBA will pay an additional fine of \$25,000.00; (b) MBA's entire athletic program will be placed on restrictive probation for one year from the date the violation is reported to TSSAA; and (c) one additional year of restrictive probation will be imposed upon the sport in which the violation occurs.
8. During MBA's probationary period, MBA has volunteered to donate any playoff revenue, including expense allotments, to The Right Team to benefit school students statewide.
9. MBA has volunteered to develop and put on, at its expense, three seminars for private schools (one in each of the three grand divisions of the State) to educate officials at those schools about measures MBA has undertaken to insure future compliance with the TSSAA Recruiting Rule and the TSSAA Tuition and Financial Aid Rule.

Sincerely,



Bernard Childress
Executive Director

⁸ The year of Aaron Simonis' ineligibility under the Recruiting Rule has passed. It is noted here because it was considered together with other instances of past ineligibility of other student-athletes under the Tuition and Financial Aid Rule in vacating wins and assessing fines for playing ineligible student-athletes.

⁹ Gabe Angel is no longer enrolled at MBA. This information is provided in case he should re-enroll.